

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court	District: Massachusetts	
Name (under which you were convicted):	Docket or Case No.:	
DAVID YARDE	2021-11181	
Place of Confinement: SOUZA Baranowski Correctional 1 Harvard Rd PO Box 8000 shirley, ma 01464	Prisoner No.: W105085	
Petitioner (include the name under which you were convicted)	Respondent (authorized person having custody of petitioner)	
David Yarde	v. Dean Gray Superintendent	
The Attorney General of the State of: Massachusetts		

## PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

Suffolk Superior Court Boston, ma

(b) Criminal docket or case number (if you know):

Docket NO: 2012-11181

2. (a) Date of the judgment of conviction (if you know):

8/4/12

(b) Date of sentencing:

8/26/12

3. Length of sentence:

15 Years to Life

4. In this case, were you convicted on more than one count or of more than one crime?  Yes  No

5. Identify all crimes of which you were convicted and sentenced in this case:

I was convicted  
on second degree murder and firearm charges

6. (a) What was your plea? (Check one)

(1) Not guilty  (3) Nolo contendere (no contest)  
 (2) Guilty  (4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

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(c) If you went to trial, what kind of trial did you have? (Check one)

Jury  Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes  No

8. Did you appeal from the judgment of conviction?

Yes  No

9. If you did appeal, answer the following:

(a) Name of court: Suffolk Superior Court

(b) Docket or case number (if you know): 2012-1118

(c) Result: Denied

(d) Date of result (if you know):

(e) Citation to the case (if you know):

(f) Grounds raised: Actu

ANSWER: 1. 1000, 2. 1000, 3. 1000, 4. 1000, 5. 1000, 6. 1000, 7. 1000, 8. 1000, 9. 1000, 10. 1000

(g) Did you seek further review by a higher state court?  Yes  No

If yes, answer the following:

(1) Name of court:

(2) Docket or case number (if you know):

### (3) Result:

(4) Date of result (if you know):

(5) Citation to the case (if you know): \_\_\_\_\_

(6) Grounds raised: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_(h) Did you file a petition for certiorari in the United States Supreme Court?  Yes  No

If yes, answer the following:

(1) Docket or case number (if you know): \_\_\_\_\_

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?  Yes  No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: U.S District Court(2) Docket or case number (if you know): 1:21-cv-11203-WG-Y

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: Actual Proof of Innocence

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

 Yes  No(7) Result: Denied(8) Date of result (if you know): 9,16,21

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

**(4) Nature of the proceeding:**

**(5) Grounds raised:**

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes       No

**(7) Result:**

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

**(4) Nature of the proceeding:**

**(5) Grounds raised:**

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes       No

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition:       Yes       No

(2) Second petition:       Yes       No

(3) Third petition:       Yes       No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Actual Proof of Innocence which  
Supports my claim that I'm being held in violation of the  
Constitution

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

A Crime Scene Reconstruction, including  
shooting reconstruction but not limited to;  
ballistics / Firearms examination was conducted  
By Lewis Gordon of Forensic Evidence &  
Investigations Proving my Innocence to  
a Scientific Certainty

(b) If you did not exhaust your state remedies on Ground One, explain why:

## (c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## (d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Rule 30

Name and location of the court where the motion or petition was filed:

Suffolk Superior

Court

Docket or case number (if you know):

2012-11181

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

Denied

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

## GROUND TWO:

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why:

**(c) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes  No

(2) If you did not raise this issue in your direct appeal, explain why:

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

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(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

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Docket or case number (if you know):

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Date of the court's decision:

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Result (attach a copy of the court's opinion or order, if available):

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two :

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**GROUND THREE:**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: \_\_\_\_\_

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**GROUND FOUR:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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(b) If you did not exhaust your state remedies on Ground Four, explain why: \_\_\_\_\_

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(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?  Yes  No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

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(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes  No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):  
\_\_\_\_\_  
\_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?  Yes  No

(4) Did you appeal from the denial of your motion or petition?  Yes  No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?  Yes  No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available):  
\_\_\_\_\_  
\_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction?  Yes  No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not

presenting them: MY Actual Proof of Innocence

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(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

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14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

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15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging?  Yes  No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

Suffolk Superior Court #2012-11181

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: \_\_\_\_\_

(b) At arraignment and plea: \_\_\_\_\_

(c) At trial: Liam Scully

(d) At sentencing: Liam Scully

(e) On appeal: \_\_\_\_\_

(f) In any post-conviction proceeding: Gordon Spencer

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging?  Yes  No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

\_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future?  Yes  No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

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\_\_\_\_\_

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

be released from unlawful restraint and not be retried

or any other relief to which petitioner may be entitled.

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Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 9, 30, 21 (month, date, year).

Executed (signed) on \_\_\_\_\_ (date).

David Shorle

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

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